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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE LUIS MALDONADO,

Defendant and Appellant.

F076300

(Super. Ct. No. F15905641)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jane Cardoza, Judge.

James Bisnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Smith, J. and Meehan, J.

A jury convicted appellant George Luis Maldonado of assault with a firearm (Pen. Code, § 245, subd. (a)(2); count 1),¹ possession of cocaine (Health & Saf. Code, § 11350; count 4), possession of methamphetamine (Health & Saf. Code, § 11377; count 5), a misdemeanor, hit and run (Veh. Code, § 20002, subd. (a); count 6), and two counts of possession of a firearm by a felon (§ 29800, subdivision (a)(1); counts 2 & 3). In a separate proceeding, the jury found true a personal use of a firearm enhancement (§ 12022.5) in count 1, a prior prison term enhancement (§ 667.5, subd. (b)), a serious felony enhancement (§ 667, subd. (a)), and allegations that Maldonado had a prior conviction within the meaning of the “Three Strikes” law (§ 667, subs. (b)-(c)).

On appeal, Maldonado contends the matter should be remanded to the trial court for it to exercise its discretion whether to strike his firearm enhancement and his serious felony enhancement.² We find merit to these contentions and remand the matter to the trial court for it to exercise its discretion whether to strike these enhancements.

FACTS

On September 9, 2015, at approximately 1:50 a.m., Maldonado crashed his car into the garage of a home in Fresno belonging to Lisa Blancarte. Blancarte went outside

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² On November 6, 2018, this court issued an unpublished opinion in this matter in which we found merit to Maldonado’s contention that the matter should be remanded for the trial court to consider, pursuant to section 12022.5, subdivision (c), as amended by Senate Bill No. 620 (SB No. 620) (Stats. 2017, ch. 682, § 1, p. 5104), whether to strike Maldonado’s firearm enhancement and if appropriate, following the exercise of that discretion, to resentence Maldonado accordingly.

On November 16, 2018, Maldonado filed a petition for rehearing requesting this court modify our opinion to allow the trial court to exercise discretion pursuant to recent amendments of section 667, subdivision (a) and section 1385 to strike serious felony enhancements (Stats. 2018, ch. 1013, §§ 1-2). Respondent did not object to this modification. On November 20, 2018, this court granted appellant’s petition and vacated our original opinion in this matter.

her house and as Maldonado got out the car, she asked if he needed help. Maldonado retrieved a handgun from the car's floorboard, racked the slide back, and pointed it at Blancarte before fleeing.

Officers who arrived on the scene soon located Maldonado in the backyard of a residence. When Maldonado attempted to flee from the yard, he encountered officers who pointed their guns at him and told him to surrender but Maldonado ran back into the backyard. However, he was soon captured in the yard with the help of a police canine. Officers recovered a handgun from the roof of a patio in the yard. Officers also went to Maldonado's home, searched his bedroom, and found a digital scale and numerous baggies, including one containing 14.943 grams of cocaine and one containing 13.049 grams of methamphetamine. Under a mattress they found a rifle and ammunition of two different calibers.

On September 13, 2017, the court reduced counts 4 and 5 to misdemeanors, but denied Maldonado's *Romero* motion. It then struck the prior prison term enhancement and sentenced Maldonado to an aggregate 15-year prison term: a doubled middle term of six years on count 1, the middle term of four years on the firearm enhancement in that count, a stayed, doubled middle term of four years on count 2, a concurrent doubled middle term of four years on count 3, five years on the serious felony enhancement, and credit for time served on counts 4, 5, and 6.

DISCUSSION

The Firearm Enhancement

Maldonado contends he is entitled to the benefit of a recent amendment to section 12022.5 that allows the court to strike arming enhancements imposed pursuant to that section and that the matter should be remanded for resentencing. Respondent concedes.

On October 11, 2017, the Governor approved SB No. 620, which went into effect on January 1, 2018. (Stats. 2017, ch. 682, § 1, p. 5104.) This bill amends section

12022.5 to allow the trial court discretion to dismiss firearm enhancements imposed pursuant to this section. (§ 12022.5, subd. (c).)

Absent evidence to the contrary, it is presumed the Legislature intended an amended statute reducing the punishment for a criminal offense to apply retroactively to defendants like Maldonado whose judgments are not yet final on the statute's operative date. (*People v. Brown* (2012) 54 Cal.4th 314, 323; *In re Estrada* (1965) 63 Cal.2d 740, 745.) Because there is no indication that the recent amendment to section 12022.5 was intended to operate prospectively only, SB No. 620 applies retroactively to Maldonado's case. Therefore, we will remand the matter to the trial court for it to consider whether to exercise its discretion to strike the firearm enhancement pursuant to section 12022.5.

The Serious Felony Enhancement

Maldonado contends he is entitled to the benefit of recent amendments to section 667 and section 1385, which allow trial courts to strike serious felony enhancements, and that remand is necessary so the court can also exercise its discretion whether or not to strike his serious felony enhancement. Respondent concedes the amendments to these sections apply retroactively to Maldonado and that the matter should be remanded for the court to consider whether to exercise its discretion pursuant to these sections.

On September 30, 2018, the Governor signed Senate Bill No. 1393, which amends sections 667, subdivision (a) and 1385, subdivision (b), effective January 1, 2019, to allow a court to exercise its discretion to strike or dismiss a prior serious felony conviction for sentencing purposes. (Stats. 2018, ch. 1013, §§ 1-2.) As with the amendment of section 12022.5, there is no indication in the amendment to sections 667, subdivision (a) or 1385, subdivision (b), that these amendments were to operate prospectively. Thus, we conclude that Maldonado is entitled to the benefit of these recent amendments, and that on remand the court shall also exercise its discretion pursuant to

section 667, subdivision (a) and section 1385, subdivision (b) whether to strike his serious felony enhancement.

DISPOSITION

The matter is remanded to the trial court for the court to resentence Maldonado and to consider whether to exercise its discretion pursuant to Penal Code section 12022.5, subdivision (c), as amended by Senate Bill No. 620 (Stats. 2017, ch. 682, § 1, p. 5104), to strike Maldonado's firearm enhancement, and to also consider, pursuant to sections 667, subdivision (a) and 1385, subdivision (b), as amended by Senate Bill No. 1393, effective January 1, 2019, whether to strike his serious felony enhancement. In all other respects, the judgment is affirmed.